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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re DOMINIQUE H., a Person Coming
Under the Juvenile Court Law.

B156283
(Los Angeles County
Super. Ct. No. CK41694)

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES, LOS ANGELES
COUNTY,

Plaintiff and Respondent,

v.

LUCIA L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of the County of Los Angeles,
Thomas E. Grodin, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Lori A. Fields, under appointment by the Court of Appeal, for Appellant.

Lloyd W. Pellman, County Counsel, Stephanie Jo Farrell, Deputy County
Counsel, for Respondent.

A mother appeals from an order terminating her parental rights to her infant son. The mother, who was homeless during these proceedings, contends the trial court erred in: (1) terminating family reunification services because respondent Department of Children and Family Services failed to help her obtain housing; (2) terminating her parental rights because she did not receive proper notice of the selection and implementation hearing; and (3) selecting adoption as her son's permanent plan. We affirm.

FACTS AND PROCEEDINGS BELOW

Respondent Department of Children and Family Services took newborn Dominique H. into protective custody shortly after his birth in February 2000. DCFS acted after the hospital notified it Dominique's mother, appellant Lucia L., who was homeless, had a history of mental illness (bipolar disorder with episodes of hostile behavior), and should not be left alone with her baby. DCFS filed a petition under Welfare and Institutions Code section 300¹ to declare Dominique a dependent of the juvenile court. That petition, in its ultimately amended and sustained form, alleged that Lucia, who had a history of mental health hospitalizations, suffered from a mental and/or emotional disability that periodically rendered her unable to care for Dominique or to provide him the basic necessities of life. (§ 300, subd. (b).)²

Lucia appeared for the detention hearing in early March 2000, and was appointed an attorney and a guardian ad litem. Dominique was detained and placed in foster care. Family reunification services were ordered, including bus passes and referrals for free or low-cost housing and parenting classes, and Lucia was given monitored visitation with

¹ All further statutory references are to this Code.

² The petition also contained allegations relating to the identity and whereabouts of Dominique's father, who has never been involved in these proceedings and who is not a party to this appeal.

her son. Because she was homeless at the time, the court ordered DCFS to notice Lucia through her attorney.

At various times during Spring 2000, a social worker met with Lucia to discuss her case plan, to provide bus passes and referrals for counseling and parenting classes, and to assist her to find housing. Lucia remained homeless during this period, neither her attorney, her guardian ad litem, or the social worker knew where she was residing. Lucia enrolled in a parenting class in May 2000, but was soon terminated from that program after engaging in hostile behavior—police were summoned to escort her out.

The record shows, that for the most part, Lucia maintained regular monitored visits with Dominique from March through November 2000. However, Lucia often engaged in erratic and inappropriate behavior toward her son, his foster mother and the social worker during those visits. On one occasion, Lucia warned two-month-old Dominique not to touch her face because she might punch him. She also told Dominique's foster mother she did not want her to speak Spanish to the child. She said she was prejudiced and hated Spanish people. On another occasion, she grabbed Dominique forcefully from his foster mother's arms and hurled obscenities at her. Lucia once told the social worker she hated Dominique, whom she said was "ugly." Later, Lucia told the social worker she did "not want" her son because his eyes were brown, not blue, and said she wanted the baby's maternal grandfather to have him.

Lucia's behavior forced the social worker to end many visits prematurely and abruptly. During visits in June, Lucia verbally abused the social worker as well as the foster mother, toward whom she also made threatening gestures, as if to strike her. On another visit, Lucia told the social worker and foster mother she "[didn't] like coloreds touching [her] baby," and demanded to carry Dominique. The foster mother told DCFS she was afraid for her own and Dominique's safety. By the end of June, the trial court was forced to suspend Lucia's visitation until she obtained mental health treatment and medication.

In June 2000, DCFS conducted a “due diligence” search for Lucia, which yielded one voter registration address and a different DMV address. Various attempts by the social worker to visit Lucia revealed that the first address was wrong, while the other was actually a mental health community service center where she once sought services and sometimes received mail. The social worker left counseling referrals for Lucia at the community service center.

Lucia attended the adjudication and disposition hearing on July 26, 2000, and testified. The court sustained the petition and ordered Dominique removed from Lucia’s care. The court also ordered family reunification services for Lucia, and ordered her to (1) attend a parenting course, (2) obtain individual counseling, psychotherapy and medication, and (3) follow the treatment plan established by her therapist. Lucia was given monitored visits with Dominique and, at her attorney’s request, DCFS was ordered to attempt to assist Lucia obtain housing as soon as possible.

Following a hearing in December 2000, Dominique was placed with his maternal grandfather in Utah. Lucia, who told DCFS in July she wanted to “sign off” her parental rights to Dominique, informed the social worker she agreed with the placement. At the December hearing, a new attorney was appointed for Lucia because her former attorney had accepted a position at the County Counsel’s office.

The six-month review hearing (§ 366.21, subd. (e)) was scheduled for January 24, 2001. In connection with that hearing, DCFS reported Lucia had not maintained contact with DCFS or complied with her case plan. DCFS also reported Lucia had visited Dominique once each month in June, July and August, but had not since contacted the social worker or foster mother to arrange further visits,³ and DCFS did not know her whereabouts. In the meantime, Dominique was reportedly adjusting well to living with his grandfather’s family and bonding with his grandfather, who wanted to adopt him. DCFS recommended adoption as the permanent plan.

³ Apparently, this information was incorrect because DCFS later reported Lucia had maintained regular visitation through November 2000.

Lucia did not appear for the January 24 hearing. The court found that notices and due diligence reports submitted by DCFS were incorrect and insufficient, because DCFS had searched for Lucia under the wrong name. The hearing was continued to March 2001, to permit DCFS to effect proper service. In March the hearing was continued again to April due to improper and insufficient notice.

The six-month review hearing was conducted in April. Although Lucia did not attend the hearing, her attorney and guardian ad litem did. The court found notice was proper. It also found reasonable services had been provided, but that Lucia had failed to comply with her case plan, and that a return of Dominique to her care posed too great a risk of detriment to the child. Family reunification services were terminated and a section 366.26 selection and implementation hearing was scheduled for August. The court also directed the clerk to notify Lucia at her last known address of her right to seek writ review, and signed an order authorizing publication of the citation for the section 366.26 hearing.⁴

In June 2001, Lucia was appointed a new attorney and a new guardian ad litem after her previous representatives each accepted positions with County Counsel.

The section 366.26 hearing was initially scheduled for August 6, 2001, but the court found the DCFS notices given for that hearing defective. Although the court found DCFS' publication as to Lucia was "appropriate," its notice to her had been sent to an address in Covina, instead of West Covina. In addition, the notice stated DCFS' recommendation was to terminate family reunification services, when in fact it intended to terminate Lucia's parental rights. Because of these problems, and because the publication for Dominique's father failed to state Dominique's full name, the court ordered DCFS to re-publish for Lucia and the father.

⁴ Although the clerk sent the notice as directed, it was sent to an address DCFS concedes was incorrect.

The selection and implementation hearing was finally conducted on December 3, 2001. Lucia did not attend the hearing; she was represented by her attorney and guardian ad litem. The court found notice proper. The court admitted several reports in evidence. Those reports, and others admitted earlier contained somewhat contradictory information that although Lucia's whereabouts were unknown after May 2000, she continued to visit Dominique weekly until November 30, 2000. Lucia's behavior during her visits with her son was described as inappropriate, hostile and irrational. DCFS also reported the child often cried during his mother's visits. On the other hand, Dominique was reportedly adjusting very well to living with his grandparents, who were eager to adopt him.

The court found Dominique adoptable and terminated parental rights. From that order Lucia appeals.

DISCUSSION

Lucia contends the order terminating her parental rights must be reversed because (1) there is insufficient evidence to support a finding that she received reasonable reunification services; (2) the notice of the section 366.26 selection and implementation hearing was improper and insufficient; and (3) she satisfied the statutory "beneficial contacts" exception to termination of parental rights (§ 366.26, subd. (c)(1)(A).) None of these contentions have merit.

1. Substantial evidence supports the juvenile court's finding that Lucia was provided reasonable family reunification services.⁵

Lucia contends the trial court erred when it terminated reunification services and scheduled the selection and implementation hearing because the record lacks substantial

⁵ Lucia is entitled to appellate review of the merits of the order terminating reunification services in this appeal from a subsequent order terminating her parental rights because, as DCFS concedes, she was not properly notified of her right to file a writ petition. (*In re Cathina W.* (1998) 68 Cal.App.4th 716, 724.)

evidence to support a finding that she was provided reasonable reunification services, in that DCFS did not help her to obtain housing. We disagree.

“[T]he power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact.” (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.)

In a case such as this, in which a child under three is removed from his parent’s custody, family reunification services are limited to six months. (§ 361.5, subd. (a)(2).) At the six-month review hearing, the dependency court must terminate reunification services and schedule a hearing to select and implement a permanent plan, if the parent has failed “to participate regularly and make substantive progress in a court-ordered treatment program,” unless, among other things, the court finds reasonable services were not provided. (§§ 361.5, subd. (a), 366.21, subd. (e).) The decision as to whether reasonable reunification services were provided must be made with an eye toward determining whether the services “provided or offered to the parent . . . were designed to aid the parent . . . in overcoming the problems that led to the initial removal and the continued custody of the child.” (§ 366.21, subd. (e); *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1776.) However, “in reviewing the reasonableness of the reunification services provided by [DCFS], we must also recognize that in most cases more services might have been provided, and the services that are provided are often imperfect. The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances.” (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) Under the circumstances

presented here, we conclude substantial evidence supports the finding that reasonable services were provided.

Lucia's primary complaint on appeal is that DCFS did nothing to assist her to find housing, despite the court's order that it attempt to do so. The record reflects otherwise.

Dominique's removal from his mother's care was due in equal parts to DCFS' fear that Lucia's history of mental illness and aggression rendered her a danger to her son, and the fact that she had no safe place to take her newborn son. Accordingly, at the time of the child's removal, DCFS' social workers made immediate arrangements so that Lucia had a place to stay after the birth and access to counseling services. At the detention hearing a week later, Lucia's attorney told the court Lucia was leaving that shelter and requested other housing referrals. However, her attorney also said he had already referred Lucia to one shelter, and had given her a number through which she could obtain other housing referrals. Lucia's guardian ad litem requested transportation funds, counseling and housing referrals, and the court ordered DCFS to "try to assist [Lucia] with that," by providing those referrals to Lucia through her attorney until she obtained a residence.

By the time of the April hearing, DCFS was unable to locate Lucia. However, as directed by the court, DCFS sent housing referrals for Lucia to her attorney and her guardian ad litem. In mid-May 2000, a social worker referred Lucia to a shelter to help her find housing and, by the end of that month, Lucia informed DCFS she was moving into a shelter in downtown Los Angeles. It was at that point that Lucia told DCFS, for the first time, that she wanted to relinquish her parental rights to Dominique. From that point on, it appears that Lucia made no effort to remain in contact with DCFS, which was also unable to locate her despite due diligence searches, and personal visits to addresses revealed by various reports. Even Lucia's attorneys and her guardian ad litem appear to have had little, if any, success in their efforts to contact their client.

Lucia complains that, because her homelessness was a "crucial component" of her inability to comply with her case plan, the social workers—whom she saw regularly

during visits with her son—should have done more to assist her to find housing. Perhaps. However, neither DCFS nor its social workers had a duty to “track [Lucia] continually throughout the dependency process The Department has a duty initially to make a good faith attempt to locate the parents of a dependent child. Once a parent has been located, it becomes the obligation of the parent to communicate with the Department and participate in the reunification process.” (*In re Raymond R.* (1994) 26 Cal.App.4th 436, 441.) Lucia was counseled regarding the steps she needed to take to reunify with her son, and was notified of her need to attend the hearings and to advise her counsel and the social worker of her whereabouts. Lucia failed to maintain contact, and her whereabouts quickly became unknown. Her social worker was unable to reach her. Moreover, it is undisputed that, apart from her visits with Dominique—the quality of which ranged from unremarkable to unsatisfactory—and a single failed attempt to enroll in a parenting class, from which she had to be physically removed and terminated because she displayed such hostile behavior, Lucia made no effort to comply with any other component of her case plan. On the basis of this record it appears that Lucia’s failure to reunify with Dominique was due, not to a lack of effort by DCFS, but to her own lack of interest or willingness to obtain the court-ordered therapeutic and psychiatric assistance she needed to comply with the case plan and to enable her to care for her son. The order terminating family reunification services is supported by substantial evidence.

2. Lucia has waived her assertion regarding improper notice.

Lucia contends she did not receive proper notice of the section 366.26, selection and implementation hearing in December 2001, and that the order made at that hearing, which terminated her parental rights and freed Dominique for adoption, must be reversed. Lucia was represented at that hearing and counsel did not assert an improper notice objection in the juvenile court. Accordingly, we conclude Lucia waived the issue of

defective by failing to raise it below.⁶ (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1152.)

3. The court properly terminated Lucia's parental rights.

Lucia argues the trial court should have applied the exception to termination of parental rights under section 366.26, subdivision (c)(1)(A) because, by virtue of her regular contact and visitation with Dominique, she and her son had developed a “significant, positive, emotional attachment” with one another, and a “loving and positive parent-child bond.” It is difficult to imagine a less accurate characterization of the evidence. Contrary to the argument, the record suggests Dominique lacked any bond with his mother and that, to the extent he had any emotional reaction to her, it was negative. Indeed, the only evidence of Dominique's reaction to Lucia indicates the child “often cr[ie]d when in the same room with [his] mother.”

Moreover, the record reflects that Lucia was consistently aggressive toward Dominique and others, held and handled the child so roughly that his caretaker feared for his physical safety, and once told the social worker and foster mother she “hated the baby and that he was ugly.” Lucia, who reportedly made a number of bigoted remarks during the course of this action, also told the social worker she did “not want” her son because his eyes were brown, not blue, and that she wanted her father to have him. There is no

⁶ We decline Lucia's invitation to ignore the fact that her counsel failed to object to the allegedly deficient notice, because the “reality of the regular practice in local dependency courts” is that only the court reviews the sufficiency of notices and publications. Despite her obligation as appellant to demonstrate reversible error on an adequate record, Lucia has not provided citations to any authority or evidence to support her contention. Moreover, particularly in this case, in which the court had already been forced to continue the section 366.26 hearing precisely because of deficient notice and had twice noted on the record that notice was proper, we have difficulty believing Lucia's counsel did not conduct at least a cursory review of the publication and deem it sufficient.

evidence in this record, which would have justified a judicial finding that Lucia had established the “beneficial contacts” exception to termination of her parental rights.

DISPOSITION

The judgment is affirmed.

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BOLAND, J.

We concur:

COOPER, P.J.

RUBIN, J.